**THE HON'BLE SRI JUSTICE C.V. RAMULU**

**+W.P.No.5219 of 2000**

%Dated 07-9-2007

# Between:

A.P. Dairy Development Co.op.
Federation Limited, rep.by its
General Manager- Dr.Sri Hari Rao
and another … Petitioners

and

The Presiding Officer,
Labour Court, Guntur and another … Respondents

!Counsel for the petitioner : Sri N. Rajeshwara Rao

^Counsel for Respondents: G.P. for Labour
Sri M. Pitchaiah

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> HEAD NOTE:

? Cases referred

1. 1994 (2) ALT 575 (DB)
2. 1993(1) ALT 29
3. 1999(1) ALD 208

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Friday, 7th day of September,2007

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**ORDER:**

This Writ Petition is filed challenging the Award dated 25-11-1999 made in I.D.No.208 of 1989 on the file of Labour Court, Guntur.

Petitioners are the Management. Respondent No.2 is the workman.

The facts are not much in dispute.

It appears, respondent No.2 joined as a contingent worker on 15-5-1970 in the Accounts Section of the petitioners' factory at Vijayawada and worked upto 14-10-1971. When his services were terminated with effect from 20-10-1971, he raised a dispute under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') before the Labour Court, Guntur in I.D.No.208 of 1989. It was the case of the 2nd respondent that he was entrusted with the duties of Typist or Lower Division Clerk during the course of his employment with the petitioners herein. He applied for leave for 5 days from 15-10-1971 to 19-10-1971, as he was not well. When he reported for duty, after expiry of leave, on 20-10-1971, he was informed that his services were terminated. No notice of any kind was issued or he was paid wages in lieu of notice before his services were terminated. The Management

also did not choose to conduct any enquiry whatsoever before his services were dispensed with. He continuously worked for more than 240 days preceding the date of his termination. The other workers, namely, K.Aruna Kumari, R. Dhanalakshi, K. Sai Leela, V.Siva Prasad and some others, who are juniors to him, were continued. One Deva Vara Kumari and Ch.Jaya Kumari, who joined in service along with him, are presently working as U.D. Accountants in the petitioners' factory. Therefore, the termination of his services is contrary to the provisions of Section 25-F of the Act.

Petitioner-Management filed a detailed counter stating that the application under Section 2-A(2) of the Act itself is not maintainable and the same is liable to be rejected *in limine,* since the dispute was raised after 18 long years. However, the fact that the 2nd respondent joined as a contingent worker on 16-5-1970 in the Accounts wing and subsequently from 1-8-1971 to 14-10-1971 he worked in the Stores Section is not in dispute. In fact, the 2nd respondent was not regular in attending to his duties and was absenting frequently. From 15-10-1971 onwards, he absented without any intimation or prior permission and thus abandoned his job from that date. The contention of the 2nd respondent that he worked continuously for 240 days is false. It is also incorrect to state that he gave representation to the Stores Incharge on 21-10-2001 for reinstatement and those allegations are set up for the purpose of present Proceedings. This is not a case of termination by the Management. This is a case where the workman himself absented from attending to his duties and abandoned the job. Before the Labour Court, the workman examined himself as W.W.1 and marked Exs.W1 to W14. On behalf of the Management, M.Ws.1 and 2 were examined and Exs.M1 to M9 were marked. After a detailed consideration of the entire evidence on record, the Labour Court came to the conclusion

that the 2nd respondent-workman had put in more than 240 days of service preceding the date of his termination and the petitioner-Management had violated the provisions of Section 25-F of the Act. Further, while considering the decisions reported in **M.M. BAIG v. APSRTC**[1], **K. RAMA RAO v. CHIEF EXECUTIVE (MILLS), NELLIMARLA JUTE MILLS**[2] and **N.P.SUBRAHMANYAM v. MANAGING DIRECTOR**[3], it was held that the delay of 18 years in approaching the Labour Court by the workman could not have mattered much and awarded a compensation of Rs.3.00 lakhs in lieu of reinstatement. Aggrieved by the same, the present Writ Petition is filed.

Learned counsel for the petitioners strenuously contended that the very petition under Section 2-A(2) of the Act ought not to have been entertained by the Labour Court. Approaching the Labour Court by a workman after a long lapse of 18 years itself shows that the matter was stale and speculative in its nature. Even assuming that there is any violation of the provisions of Section 25-F of the Act, since, even according to the workman, he was a contingent employee and approached the Labour Court after a long lapse of 18 years of his termination, which itself would show that he has abandoned the job, he is not entitled for any relief. Further, granting any relief including compensation in lieu of reinstatement, at this length of time, does not arise. In fact, such litigation should be discouraged by the Labour Court.

Per contra, Sri M.Pitchaiah, learned counsel appearing for the 2nd respondent, strenuously contended that the theory of delay and laches is foreign to the Act, particularly, for raising a dispute under Section 2-A(2) of the Act. Further, once it is found that there is a

violation of Section 25-F of the Act, granting reinstatement with continuity of service and other benefits is automatic. May be, in a given case, where the delay is not explained, the workman is not entitled for back wages. In this case, in view of the fact that there was a delay of 18 years in approaching the Labour Court, it had considered appropriate to grant compensation in lieu of reinstatement that too, in view of the submissions made by the counsel on behalf of the Management. Therefore, the Writ Petition is liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Award and other material made available on record.

The only question that arises for consideration, in this Writ Petition, is as to whether the Labour Court ought to have entertained a petition under Section 2-A(2) of the Act, after a long lapse of 18 years ?

The claim petition does not refer as to what was the explanation offered by the 2nd respondent for the long delay of 18 years in approaching the Labour Court. In this background, the learned counsel for the 2nd respondent supported the Award passed by the Labour Court relying upon a Judgment reported in **M.M. BAIG** case (2 supra). In the said case, the workman's services were terminated in the year 1961. The State Government made a reference to the Labour Court after 18 years. The Labour Court ordered to reinstate the workman therein with full back wages in 1984. On a Writ Petition being filed by the Management-APSRTC the reinstatement was upheld, but without back wages. The workman carried the matter in appeal and a Division Bench of this Court held that since the Management is not responsible for the delay of about 23 years in passing of order of reinstatement, 60% of back wages was considered

just and proper in the circumstances of that case. This is a case wherein the workman approached the Government through Union at the earliest point of time, but the State Government refused; however, made the reference nearly after 18 years of the first refusal. Therefore, it was held that the Government communicated its acceptance to make the reference and made reference by G.O.Ms.No.736, dated 10-10-1980 to the Labour Court. The Award was passed on 17-12-1984. Prior to making of the Award, the 1st respondent therein challenged the reference by the Government before this Court in Writ Petition No.8389 of 1983, which was dismissed on 21-11-1988. No appeal was filed against the said Judgment. The workman therein was reinstated into service on 22-2-1985 and retired in Apri,1988. Under those circumstances, when the Award passed by the Labour Court was challenged in W.P.No.5994 of 1985, the Order of reinstatement was upheld, but without back wages. On an appeal being filed in W.A.No.1265 of 1988, a Division Bench of this Court held that granting of full back wages is not proper; however, since the workman was found to have contributed to the delay, payment of 60% of back wages was fit and proper. The case on hand is not one such case. In this case, straightaway a petition under Section 2-A(2) was filed after a gap of 18 long years. For eighteen (18) long years, the workman has not made any effort to raise a dispute, including initiation of conciliation proceedings etc. Though the Industrial Disputes Act,1947 does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and entertained without regard to the delay and reasons therefor. Therefore, I am of the opinion that the Labour Court was not right in entertaining the petition under Section 2-A(2) of the Act after a long gap of 18 years and passing the Award. May be, in lieu of reinstatement, some

compensation was award, but the same cannot be said to be just and proper. The availability of the record with the Management also does not make any difference for the purpose of considering the delay and laches on the part of the workman. Absolutely, this is a stale case and does not consider entertaining a petition under Section 2-A(2) of the Act. Therefore, I am of the opinion that the submissions made by the learned counsel for the 2nd respondent that the Parliament in its wisdom has not prescribed any limitation and the Limitation Act has no application and, therefore, even if the claim petition is filed after 20 years, it makes no difference and since the order of termination is illegal in its nature, the workman is entitled for reinstatement with back wages and other attendant benefits, and, in fact, the Labour Court has taken a lenient view of the matter and in lieu of reinstatement, as per the submissions made by the learned counsel for the petitioners herein has ordered to pay compensation of Rs.3,00,000/-, cannot be countenanced. This is a classic example of a case of delay and laches in approaching the Labour Court, which made the cause stale and no Court with prudence could entertain such a petition.

For all the above reasons, the impugned Award passed by the Labour Court is liable to be set aside and is accordingly set aside.

However, it is brought to the notice of this Court that while admitting the Writ Petition, the petitioners were directed to deposit an amount of Rs.50,000/- and on such deposit, the workman was permitted to withdraw. Learned counsel for the petitioners states that the said amount of Rs.50,000/- was deposited and the same was withdrawn by the 2nd respondent. In view of the above and in the facts and circumstances of the case, I am of the opinion that the petitioners shall not recover the amount already paid by them to the workman in pursuance of the interim order passed by this Court on 29-6-2-2000.

Accordingly, subject to the above observations, the Writ Petition is allowed. No order as to costs.

07-9-2007

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[1] 1994 (2) ALT 575 (DB)

[2] 1993(1) ALT 29

[3] 1999(1) ALD 208